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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re RODRIGO G., JR., a Person  
Coming Under the Juvenile  
Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

RODRIGO G., SR.,

Defendant and Appellant.

B323717

(Los Angeles County  
Super. Ct. No. 20CCJP04076A)

APPEAL from an order of the Superior Court of Los  
Angeles County, Gabriela H. Shapiro, Judge Pro Tempore.  
Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County Counsel, and Stephen Watson, Senior Deputy County Counsel, for Plaintiff and Respondent.

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Father, Rodrigo G., Sr., appeals from the juvenile court's order denying his Welfare and Institutions Code section 388<sup>1</sup> petition to reinstate family reunification services with his son, Rodrigo G., Jr. He argues that the trial court abused its discretion in finding that he failed to show reinstating reunification services was in the child's best interests. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Rodrigo's Removal from Father**

In a previous unpublished opinion reviewing the juvenile court's orders made at the disposition hearing, *In re Rodrigo G.* (Dec. 20, 2021, B310780), we affirmed the order removing Rodrigo from father, and we reversed the order requiring father to submit to random drug testing. We take judicial notice of that opinion, which explained how this case began in July 2020, when nonparty mother tested positive for amphetamines and methamphetamines while in labor. Upon learning that the hospital intended to inform the Los

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

Angeles County Department of Children and Family Services (the Department) of this, mother left the hospital against medical advice and despite having received an epidural. Mother gave birth at father's home and refused to be transported to a hospital. When a children's social worker and law enforcement officials went to father's home, father initially refused to open the door and then was "aggressive, argumentative and refused to provide any information." The social worker believed that "[f]ather and mother were working together not to cooperate with [the Department]."

#### **B. Six-Month Review Report and Hearing**

Rodrigo was eventually placed with father's ex-wife, J.R., and Rodrigo's three half-siblings, which was his third foster care placement. During the six-month review period, father expressed to a social worker concern about mother, stating that mother "continue[d] to break into his home" and call him multiple times a day. Father sent the social worker pictures of his home "being a mess" because of mother breaking in and stated he contacted law enforcement. Mother then moved in next door to father. Father told the social worker that he was unsure he should reunify with Rodrigo because he feared that mother would continue to jeopardize Rodrigo's and his other children's safety.

Concerning court-ordered services, the Department was ordered to provide referrals for individual counseling and parenting classes to father. Father completed 12

sessions of parenting classes from November 2020 through July 2021. Father did not provide the Department with any proof that he had enrolled in individual counseling as of July 2021.

Although father occasionally visited Rodrigo during this period, the Department stated that father had not demonstrated any behavioral changes indicating that he had the ability to be protective of his infant son. Father further did not make himself available to meet with the social worker and was not responding to the social worker's calls, messages, or mail. At the six-month review hearing on October 13, 2021, the court found that mother had made substantial progress, but father had not. The court determined that returning Rodrigo to parental custody created a substantial risk of detriment to him and ordered continued reunification services for father and mother. A section 366.21, subdivision (f) hearing was set for April 7, 2022.

### **C. 12-Month Review Report and Hearing**

In March 2022, the Department reported that father still had not enrolled in individual counseling or made himself available to meet consistently with the social worker. Father stated interactions with mother continued to be volatile. Rodrigo's caregiver, J.R., reported that father's visits were inconsistent, and that father had not visited Rodrigo in person for about a month but had video visits. The Department was unable to assess father's knowledge of

parenting and child development due to father's inconsistent visits with Rodrigo. Further, the social worker "ha[d] not observed [father] to display minimal protective factors including social connections and concrete support." The Department assessed that father had not demonstrated insight or progress into the issues that brought the family to the Department's attention, and it recommended terminating reunification services.

At the section 366.21, subdivision (f) review hearing on April 7, 2022, the court terminated reunification services after finding the parents' progress had not been substantial. The court explained that the parents had received 18 months of services, and it did not have a basis to grant more. The court set a section 366.26 hearing for August 4, 2022.

After the April 7, 2022, hearing, the court ordered the Department to initiate an Interstate Compact on Placement of Children in June 2022 for Rodrigo's placement with paternal uncle and aunt, who reside in Arizona. Rodrigo's caregiver was not pursuing adoption, so the Department recommended that Rodrigo be adopted by paternal uncle and aunt.

#### **D. Father's Section 388 Petition**

On August 4, 2022, father filed a section 388 petition (form JV-180), requesting the court change its order terminating reunification services. Father requested the court order Rodrigo's return to father's custody, or alternatively, reinstate reunification services. Father

asserted that since services were terminated, he had completed individual counseling, that the caregiver reported that he had been visiting regularly without concern, and that he continued not to be in a relationship with mother. Father stated that granting the petition would be better for Rodrigo because “[f]ather and minor share a strong bond and father has remediated the issues that brought this matter to court and completed his case plan.”

The court set a hearing on father’s petition for September 14, 2022. The section 366.26 hearing was continued to the same date.

In its response, the Department recommended denying father’s petition. The Department recounted numerous incidents of abuse between father and mother that occurred throughout this case’s history. In November 2021, mother reported that father kicked in the window of her home, and in December 2021, father called law enforcement and reported that mother hit him on the head with a broom. Upon law enforcement responding, father and mother both reported they were having a fight about money. In March 2022, mother reported to the Department that father broke a window in her home and placed a tracking device on her vehicle. After reunification services were terminated, father alleged that mother attacked him at a casino in San Bernardino in April 2022, and on June 5, 2022, mother called law enforcement reporting that father was banging on her window trying to get into her home.

In addition, less than ten days before father filed his section 388 petition, on July 26, 2022, father allegedly broke into mother's home and attacked her after seeing her lying in bed with another man. Father later told the social worker that it was not him that assaulted mother. He said that he was going to move into mother's home the day of the alleged incident because he was being evicted but he got upset and left when he saw her being intimate with another man. Finally, father reported that on or about August 27, 2022, mother "came over" and broke his windows.

Regarding visitation, J.R. continued to report that father did not visit Rodrigo consistently and that there were months he had not visited at all. Father visited Rodrigo three times in August 2022, but he left on two occasions because Rodrigo was asleep. When asked how Rodrigo reacted when father would leave, J.R. replied, "[s]ometimes, he'll react or sometimes, he'll not notice it. He'll say, "Bye," and he's fine."

During an interview with the social worker, father stated that in his counseling sessions, he addressed his concerns about regaining custody and how the Department was treating him. Father asserted that the Department "kidnapped" Rodrigo from him and that "[f]emales like [mother are] a problem." When asked if there was anything he would have done differently, father responded, "I would have gone against [mother]. I would have dug into her life and throw[n] her under the bus. I should have never back[ed] her up. She's a liar. She's a nobody."

### **E. The Section 388 Petition Hearing**

Father testified at the hearing that it was his understanding that this action commenced because mother had a drug problem. Regarding reunification services, father stated that at first, he “didn’t really want to do it,” but he decided to start the parenting classes and individual counseling when he saw the seriousness of the situation. Father further asserted that he was already familiar with “how to parent” from his three other kids. He said that in counseling, he talked about how he was angry at the Department, and he processed that anger.

About the incidents with mother after reunification services were terminated, father testified that mother hit him in the back of his head at a casino in April 2022 and that it was mother who broke his window in June 2022. Father stated that all contacts were involuntary. However, father also admitted that he called mother once in July 2022 when he was being evicted from his home. He testified, “I sort of knew that she had moved out and the apartment she was in was paid for . . . but she doesn’t live there, anymore. And, so, she said go ahead, you can go there, no one is there. And when I got there, the window was broken and she was laying with someone else in bed.” Father claimed he “just said a curse word and left.” He denied having any physical contact with mother and said she was lying about the alleged assault.

When asked about visitation with Rodrigo, father stated that he “didn’t really get to” in August 2022, but



“stepped it up” in September 2022. Further, father added that he believed he had a bond with Rodrigo, and Rodrigo had a bond with his half-siblings. Rodrigo’s counsel and the Department requested father’s petition be denied.

#### **E. The Juvenile Court’s Ruling**

After hearing argument from counsel, the juvenile court noted, “[O]ne of the big issues seems to be that the father doesn’t have insight.” The court asked father’s counsel what father’s plan was if he were given further reunification services. Father’s counsel responded, “I believe he would do more individual counseling, your honor. [¶] I think that would be—that would go to the crux of it. Frankly, I think given his testimony regarding his anger at the Department, that perhaps some sort of—well, that could be dealt with in individual counseling. I don’t know if that’s necessarily anger management. But I think given the incidences going on, [Domestic Violence] support group for victims would even be appropriate.”

The court felt that the case plan did not address some underlying issues and expressed that father’s petition and the Department’s response “present[ed] a picture of father in a way that makes him look like he was not being truthful.” The court also pointed out a “factual inconsistency,” as father testified that he only had two involuntary contacts with mother, but when he was evicted, he stated he contacted mother and she told him he could move into her apartment. Father and mother, thus, had contact and were

communicating somehow. The court expressed, “[I]t doesn’t make any sense that it was a surprise to see mother in her own apartment. I don’t know where mother was supposed to be s[t]aying.” In addition, the court stated that one of the detracting factors about father’s visitation with Rodrigo was that Rodrigo’s caregiver explained that “father basically saw [Rodrigo] when he went to go see his other kids, and that it wasn’t very meaningful.”

The court felt that the ten counseling sessions did not “really [do] much of what it had to do. . . [T]here is still a lot of blaming that it’s all the mother’s fault and that if you could do it differently, you would blame the mother, you said. Those were your words. You would not side with the mother. And, so, what that tells me is that I can interpret that to mean, based on what you said in the report and today, that you have stood by the mother this whole time or you’ve agreed with her and not focused only on your son.” After noting that Rodrigo had been out of father’s care for two years, the court stated that there was no evidence to find that additional reunification services would be beneficial. The court asserted that despite the parenting classes and ten counseling sessions, there was still some confusion or lack of understanding as to why the case existed.

The court concluded that father’s completion of individual counseling demonstrated changed circumstances but father did not show granting the petition was in Rodrigo’s best interests. The court felt that the primary issue was codependency between father and mother, and

that despite father’s testimony to the contrary, the parents were still drawn to each other, as shown by father contacting mother when he was going to move in with her. The court determined that was not an appropriate environment for Rodrigo. The section 388 petition was denied, and father timely appealed.<sup>2</sup>

## DISCUSSION

### A. Legal Principles and Standard of Review

Pursuant to section 388, a parent may petition the juvenile court for modification of any previous order based upon changed circumstances or new evidence. (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478.) A parent may seek relief under section 388 even after the juvenile court has terminated family reunification services. (*Ibid.*) “Section 388 provides the “escape mechanism” that . . . must be built into the process to allow the court to consider new information.” (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447.) “After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and

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<sup>2</sup> The court continued the section 366.26 hearing and ordered the Department to interview Rodrigo’s adult sibling to assess whether he was willing and able to do any kind of permanent plan with Rodrigo. Additionally, the Department was ordered to speak to paternal uncle and aunt to address whether they would be interested in guardianship as opposed to adoption. The court found it would be detrimental if it proceeded without having the other options explored.

stability.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Following the termination of reunification services, “it is presumed that continued out-of-home care is in the child’s best interests.” (*In re Alayah J.*, *supra*, at p. 478)

To obtain modification of an order pursuant to section 388, the parent must demonstrate, by a preponderance of the evidence, both a change of circumstances or new evidence, and that the proposed change is in the best interests of the child. (*In re Alayah J.*, *supra*, 9 Cal.App.5th at p. 478; *In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) In evaluating a section 388 petition, the juvenile court may consider factors such as “the seriousness of the reason leading to the child’s removal, the reason the problem was not resolved, the passage of time since the child’s removal, the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner.” (*In re Mickel O.*, *supra*, at p. 616; see also *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446–447.) The court may consider the entire factual and procedural history of the case. (*In re Mickel O.*, at p. 616.) “In assessing the best interests of the child, ‘a primary consideration . . . is the goal of assuring stability and continuity.’” (*Ibid.*; see also *In re Angel B.* (2002) 97 Cal.App.4th 454, 464 [the parent has the burden of proving that the benefit to the child of reinstating services outweighs the benefit the child would derive from the stability of a permanent placement].)

We review the summary denial of a section 388 petition for an abuse of discretion. (*In re Samuel A.* (2020) 55

Cal.App.5th 1, 7; *In re Alayah J.*, *supra*, 9 Cal.App.5th at p. 478.) ““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318–319.)

## **B. The Juvenile Court Did Not Abuse its Discretion**

Father argues that the juvenile court erred in denying his section 388 petition requesting additional family reunification services.<sup>3</sup> While the court found he showed changed circumstances based on his completion of individual counseling, father asserts that he also demonstrated that it was in Rodrigo’s best interests to reinstate father’s reunification services. Father contends that the reason for any continuation of case issues was because the case plan did not properly address some underlying issues. Additionally, father contends that there was a strong presumption in preserving the family. Finally, father asserts that he gained insight into the seriousness of the case and completed his case plan. We conclude the court did not abuse its discretion in denying father’s section 388 petition.

Regarding the seriousness of the reason leading to Rodrigo’s removal, Rodrigo was removed from father because

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<sup>3</sup> Father is not challenging the juvenile court’s decision denying his request to return Rodrigo to his custody.

of his unwillingness to protect Rodrigo from mother. For example, after mother left a hospital, went to father's home, and gave birth there, despite knowing that Rodrigo may have had immediate medical needs due to mother's drug use, father chose not to take Rodrigo to the hospital. He also refused to admit that any of his actions at the time were wrong.

At the hearing on the section 388 petition, the juvenile court expressed concern that the codependency between father and mother continued, and considering the numerous incidents between father and mother, the court's concern was reasonable. After father reported that mother "continue[d]" to break into his home and sent the social worker pictures of her leaving it a mess, mother moved next door to father. Father told the Department he was unsure if reunifying with Rodrigo was the best option because father feared mother would continue to jeopardize Rodrigo's safety. Moreover, father and mother engaged in multiple physical and verbal altercations at each other's homes while this action was pending.

Even after reunification services were terminated, father alleged that in April 2022, mother hit him "forty to fifty times," including in the back of his head, at a casino in San Bernadino. In June 2022, mother called law enforcement reporting that father was banging on her window trying to get in, and when law enforcement responded, mother and father said it was only a verbal argument. The Department's report indicates that on July

26, 2022, which was a few days after father completed individual counseling and shortly before he filed his section 388 petition, father intended to move in with mother but observed mother lying in bed with another man in her home, so father broke into her home and assaulted mother. Thereafter, father reported that mother went over to his home in late August 2022 and broke his windows. As the juvenile court noted, the repeated altercations and contact between father and mother raised serious concerns as to whether father could safely care for and protect Rodrigo.

While father contends the reason for the unresolved issues was the Department's failure to provide him with an adequate case plan, father points to nothing in the record showing that he objected to the adequacy of the services provided. Moreover, father does not articulate why he did not attempt to address issues with mother, rather than issues with the Department, in the individual counseling that he had. The evidence shows that father had an awareness of the problems he had with mother, as he blamed the Department's case on her, wishing he had "throw[n] her under the bus," yet he did not seek to deal with issues related to his relationship with her in counseling.

Father does not argue or demonstrate that the strength of Rodrigo's bond with him was such that ordering further reunification services would be in Rodrigo's best interests. Father instead cites to *In re Justice P.* (2004) 123 Cal.App.4th 181 in asserting that the presumption favoring

natural parents should not be ignored here. However, as was recognized in *In re Justice P.*, “[t]he presumption favoring natural parents by itself does not satisfy the best interests prong of section 388. The cases that state a child may be better off with his or her biological parent rather than with strangers do so when the biological parent has shown a sustained commitment to the child and parenting responsibilities.” (*Id.* at p. 192.) Further, unlike the reunification period where the focus is to preserve the family whenever possible (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 507), after reunification services are terminated, the presumption is that continued out-of-home care is in the child’s best interests, and the focus is to provide that child with a stable, permanent home. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1788; *In re Alayah J.*, *supra*, 9 Cal.App.5th at p. 478.) Father’s interest in reunifying, therefore, was no longer paramount. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)<sup>4</sup>

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<sup>4</sup> While Father is unable to show a strong bond with Rodrigo, he argues that “it is in Rodrigo’s best interest to grant father’s services so that Rodrigo could not only unify with father but continue his relationship with his half siblings.” He implies that Rodrigo has a strong bond with the three half-siblings with whom he has been living, and since their mother and Rodrigo’s caregiver, J.R., is not going to maintain custody of Rodrigo, placing Rodrigo with father would allow for continued contact with the siblings. Father has not provided any authority to show that in assessing the relative bonds between the parent and caretakers for purposes of evaluating a section 388 petition, bonds to siblings should be considered. Further, the court continued the section 366.26 hearing so that the Department could explore  
(*Fn. is continued on the next page.*)



Regarding the nature of the change of circumstances, when asked a few weeks before the section 388 hearing what he learned from counseling, father replied that he addressed his “concerns about regaining custody of [his] son and how this Department [was] treating him.” Father asserted that the Department “kidnapped” Rodrigo from him, even though he was a good father. He stated that “[f]emales like [mother are] a problem.” While father completed the ten individual counseling sessions, the court reasonably found that he still lacked insight into the case issues.

Lastly, while father is correct that he was not technically required to engage in services during the reunification period to succeed on his petition, father did not enroll in counseling until after the reunification services were terminated. And he acknowledged the reason for this was that he did not take the case as seriously as he should have and did not want to partake in services. As the court noted, Rodrigo had been out of father’s care for approximately two years at the time of the hearing, but father did not offer any additional explanation for why a change was not made sooner.

Based on the foregoing, father does not establish that the juvenile court “exceeded the bounds of reason” by denying his section 388 petition. (*In re Mickel O.*, *supra*, 197 Cal.App.4th at p. 616.)

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whether Rodrigo could be placed with an adult sibling to facilitate continued contact with his siblings. Thus, it is not clear that Rodrigo needs to be placed with father to continue contact with his siblings.

**DISPOSITION**

The juvenile court's order is affirmed.

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MORI, J.

We concur:

COLLINS, Acting P. J.

ZUKIN, J.